



November 19, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Regulation E Revisions (Docket No. R-1210)

Dear Ms. Johnson,

The Michigan Credit Union League (MCUL) appreciates the opportunity to provide comments to the Federal Reserve Board (FRB) concerning the FRB's proposal for Regulation E revisions. The MCUL is a trade association representing over 90% of state and federally chartered credit unions in the state of Michigan. This comment letter was drafted in consultation with the MCUL Government Affairs Committee, which is comprised of Michigan credit union staff and officials.

MCUL appreciates the FRB's efforts to update and revise the commentary of Regulation E to ensure that it addresses the relevant aspects of electronic payments. MCUL supports most of the proposed changes, however we have reservations regarding some of the proposal and the timeline involved. Below are our comments:

Summary of Comments

1. MCUL supports a requirement to continue to require merchants who are anticipating converting a check to a point-of-sale (POS) transaction, to be required to get permission prior to converting the check.
2. MCUL supports the requirement to continue to require merchants to provide notification and, in cases when necessary, authorization for other payments that are converted into electronic funds transfer (EFT) transactions.
3. MCUL supports merchants using disclosures that indicate a consumer presented check may be processed as a check, or converted to an Automated Clearing House (ACH) transaction.
4. MCUL does not support the proposed revision to extend the error resolution requirement beyond the current "four wall" standard. We believe that the limited benefits from doing this will ultimately be more costly to financial institutions that will spend unnecessary resources investigating what usually is an issue between the originator and the consumer.
5. MCUL recommends combining the three, sample payee notices proposed into one notice that captures the essence of all three notices. We believe that this will benefit both merchants and consumers.

6. MCUL recommends extending the compliance period after the changes are finalized to at least a year to allow our member credit unions, especially the smaller ones, time to comply with the changes.

Discussion

Continue Written Authorization for POS Transactions. MCUL supports the requirement for merchants to continue to request “written signed authorization” for point-of-sale transactions. We believe that while many consumers are becoming accustomed to the process of having their checks scanned and converted to an ACH payment, there is still a benefit to making them aware of this process prior to converting the checks. Point-of-sale conversion is different from WEB or TEL transactions, in which the consumer never offers a check to the merchant, but provides the information over the telephone.

If the consumer is not provided the POS authorization notice after providing a check to a merchant, they may be inclined to believe that their check will be processed as a check and will be subject to the protections as a check, instead of a transaction governed by Regulation E. Providing the “written signed authorization” statement serves to reinforce their awareness of the potential payment conversion, as well as provide them the alternative of taking their business to a merchant that will not convert their check to an ACH payment. We believe at this point to remove the signed authorization requirement might create confusion among existing consumers, which would translate to more contact, questions and disputes that would have to be handled by their financial institutions.

Consumer Authorization For EFT. MCUL believes that basic authorization and notification requirements serve the interests of consumers. We also believe that the use of notices and the provided safe harbor provisions benefit merchants and other entities that initiate EFT transactions. Since originators, under current NACHA rules, are already required to provide authorizations and notices, we do not anticipate there would be any significant compliance issues with the FRB’s proposal. We believe that the proposed changes will continue to clarify the rights and responsibilities of both merchants and consumers. Specifically outlined in the proposal is a provision that would allow one EFT payment authorization to convert multiple checks received in a single billing period. Since this is a common practice already in the ACH field, we believe that clarifying this practice would be beneficial for all.

Provide Disclosures That Allow For Multiple Collection Alternatives. Finally, we support language in disclosures that would allow for a check to be either collected as a check or as an ACH payment. We do not believe the disclosure should have to indicate if a check will be processed as one payment type versus the other, but simply notify the consumer that there exists the potential to process this payment in multiple forms. We believe that most merchants who will use this disclosure will likely convert the payment to an EFT transaction, however we support providing some level of discretion on behalf of the merchant as to how they collect the payment. In the end, by providing a notice encompassing both alternatives, both the interests of the merchant and consumer will be protected.

Error Resolution. Regulation E currently permits a financial institution to satisfy its obligation to investigate an alleged error by reviewing its own records, if the alleged error concerns a transfer to or from a third party, and there is no agreement between the institution and the third party for the type of EFT involved. MCUL believes that the proposal on error resolutions to require receiving depository

financial institutions (RDFIs) to investigate their records for any relevant information available within the institution to determine if an error occurred, could be onerous, expensive, and difficult to prove. FRB asserts that the “four walls” principle on which the current error resolution process is inadequate to address issues such as fraud. However, with the exception of the issue of stolen checks used to create transactions, the requirement to go beyond the review of the transfer to or from a third party is unnecessary.

In the case of ACH transactions, if the member/customer believes that the transaction is fraudulent, the financial institution will review the details of the transaction and, if the transaction is within 60 days of the original settlement date, and the member provides a Written Statement Under Penalty of Perjury, will return the transaction as unauthorized. The current process places the responsibility back on the originator of the transaction to resolve with the consumer, at no additional risk to the consumer. The proposed changes would require the financial institution the responsibility of an additional review, which burdens them with additional time and manpower costs. In the end, the RDFI is unlikely to have any information available that would benefit the member since all of the relevant information exists with the entity that originated the transaction.

Combine Sample Language Into One Notice. MCUL believes that the three sample payee notices should be boiled down into one notice that can be provided to all consumers. We do not believe that providing three model notices are of any benefit to consumers. As we have indicated in the past, fewer notices and more consistency is key to educating consumers. Notifying people that their payments may be converted into an electronic payment would be sufficient in making them aware of the potential ACH conversion. We do not believe it is necessary to include language notifying them of the timeframe in which the electronic transaction may occur is necessary. With the passage of Check 21, all transactions whether electronic or otherwise will continue to clear accounts with increased speed.

Extended Compliance Period. Based on the significance of the proposal, and the significance with which Regulation E provisions impact credit unions, MCUL requests that the compliance period should be extended to at least one year from the effective date of the changes. This should provide credit unions with sufficient time to amend their Regulation E disclosures, implement policies to deal with the changes, and address any training necessary to deal with the regulations. This would be especially beneficial to small credit unions that are constantly struggling with limited resources to comply with regulatory changes.

We thank you for the opportunity to comment.

Sincerely,



Matthew Beard
Regulatory Specialist
Michigan Credit Union League

cc: Credit Union National Association, Inc.